



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

**Via First-Class Mail**

Ms. Ann Micka  
LeClairRyan PC  
815 Connecticut Avenue, NW, Suite 620  
Washington, DC 20036

**DEC -8 2015**

RE: MURs 6563 and 6733  
Campaign for Primary  
Accountability Inc. and Jonathan  
Martin in his official capacity  
as treasurer

Dear Ms. Micka:

The Federal Election Commission notified the Campaign for Primary Accountability and its treasurer on May 3, 2012, of a complaint in MUR 6563, and on May 8, 2013, of a complaint in MUR 6733, both of which alleged violations of the Federal Election Campaign Act of 1971, as amended.

On November 19, 2015, the Commission found, on the basis of the information in the complaints, and information provided by LeClairRyan PC, that there is no reason to believe that the Campaign for Primary Accountability and its treasurer violated 52 U.S.C. § 30116(f). Accordingly, the Commission closed its file in these matters as it pertains to the Campaign for Primary Accountability and its treasurer.

The Commission reminds you that the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A) remain in effect, and that these matters are still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Tanya Senanayake, the attorney assigned to this matter, at (202) 694-1571.

Sincerely,

A handwritten signature in black ink that reads "Mark Allen".

Mark Allen  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

1004440-718

1 **FEDERAL ELECTION COMMISSION**

2  
3 RESPONDENT: Campaign for Primary Accountability Inc. MURs 6563 and 6733  
4 and Jonathan Martin in his official capacity  
5 as treasurer  
6

7 **FACTUAL AND LEGAL ANALYSIS**

8 **I. INTRODUCTION**

9 This matter arises from two Complaints that allege violations of the Federal Election  
10 Campaign Act of 1971, as amended ("the Act"), arising from the Campaign for Primary  
11 Accountability Inc. ("CPA"), an independent-expenditure-only political committee, receiving  
12 contributions in violation of the Act.

13 The Complaint in MUR 6733 bases its allegations on an Office of Congressional Ethics  
14 ("OCE") investigative report ("OCE Report") submitted to the House of Representatives  
15 Committee on Ethics ("House Ethics").<sup>1</sup>

16 CPA responds that the Complaints do not allege any violations on its part, that CPA  
17 received lawful contributions, and that the Commission should take no further action against  
18 CPA and summarily dismiss it as a Respondent in these matters.<sup>2</sup>

19 Based on the available information, the Commission finds no reason to believe that CPA  
20 received an excessive contribution in violation of 52 U.S.C. § 30116(f).

<sup>1</sup> See Compl. at 2, Attach. A, MUR 6733; OCE Review No. 12-9525, adopted Aug. 24, 2012, *available at* <http://ethics.house.gov/sites/ethics.house.gov/files/OCE%20Report%20Rep.%20Schock.pdf>. On February 6, 2013, OCE publicly released its report that it referred to House Ethics on August 30, 2012. See FEBRUARY 6, 2013—OCE REFERRAL REGARDING REP. AARON SCHOCK, *available at* <http://oce.house.gov/2013/02/february-6-2013---oce-referral-regarding-rep-aaron-schock.html>.

<sup>2</sup> CPA Resp. at 1-2 (May 22, 2012), MUR 6563; CPA Resp. at 1-2 (May 30, 2013), MUR 6733.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Summary

Representatives Adam Kinzinger and Don Manzullo were candidates in the Illinois 16th Congressional District primary election held on March 20, 2012. Information in the Commission's possession indicates that then-Representative Aaron Schock (18th District, Illinois) supported Kinzinger and sought to assist him. Further information indicates that Schock learned that CPA was broadcasting advertisements opposing Manzullo and believed that CPA needed additional funds to be able to air the advertisements again prior to the election. Schock's first-person description of relevant events was quoted in a press article:

"The final week of the campaign, it got very tight, it was neck and neck. I was trying to do everything I could to help the Kinzinger campaign and reached out to the committee that was running ads in support of them."

"They were basically running the television ads for him, [and] I asked if I could specify a donation to them," to be used only in the Illinois primary.

"And they said I could."<sup>3</sup>

CPA personnel state that Rodney Davis, at the time a staffer for Representative John Shimkus (15th District, Illinois),<sup>4</sup> was the contact person for the following contributions that CPA received for the Kinzinger race:<sup>5</sup>

<sup>3</sup> John Stanton, *Eric Cantor Gave \$25K to Anti-Incumbent PAC to Aid Adam Kinzinger*, ROLL CALL, Apr. 6, 2012, [http://www.rollcall.com/news/Eric\\_Cantor\\_Gave\\_Money\\_to\\_Super\\_PAC\\_to\\_Aid\\_Adam\\_Kinzinger-213651-1.html](http://www.rollcall.com/news/Eric_Cantor_Gave_Money_to_Super_PAC_to_Aid_Adam_Kinzinger-213651-1.html) (alteration in original). CPA aired and distributed independent expenditure advertisements opposing Manzullo totaling \$239,531.68, all during a period from March 8 through March 19, 2012. The only expenditures for television advertising — in the amounts of \$15,000; \$25,000; and \$35,000 respectively — all occurred on March 16 or 17, 2012, after or on the same day as the contributions at issue in this matter. See CPA 2012 Amended April Monthly Report at 38; CPA 24/48 Hour Notice of Independent Expenditures (Mar. 19, 2012). CPA's television advertisement is described in an e-mail from Rob Collins, Cantor's former Chief of Staff, as "the ad that Shimkus, Schock and Cantor have sent money in to support that the Campaign for Primary Accountability is running." OCE Report Ex. 23 at 12-9525\_0140 (E-mail from Rob Collins to Ted Burnes (Mar. 15, 2012 10:24 AM)). CPA also disclosed an \$18,000 independent expenditure on March 17, 2012, to the same vendor for a radio advertisement, the only radio communication among CPA's independent expenditures opposing Manzullo. See Amended April Monthly Report at 39.

1 CPA Managing Director Jamie Story states that in March 2012, CPA Co-Chairman Eric  
2 O'Keefe told her to call Davis because he knew of individuals who would contribute to CPA's  
3 efforts in Kinzinger's election.<sup>9</sup> Story further states that she provided Davis with wiring  
4 instructions for contributions and that she did not ask Davis for contributions or a specific  
5 amount of money.<sup>10</sup> CPA Development Coordinator Hannah Christian states that, to her

<sup>5</sup> See CPA 2012 Amended April Monthly Report at 9 (July 23, 2012); OCE Report Ex. 4 at 12-9525\_0021 (OCE Mem. of Interview of CPA Managing Director (Jamie Story) ¶ 12 (“Story MOI”)); OCE Report Ex. 6 at 12-9525\_0028 (OCE Mem. of Interview of CPA Development Coordinator (Hannah Christian) ¶ 26 (“Christian MOI”)). The OCE Report usually refers to CPA’s Managing Director and Development Coordinator by their positions rather than their names, but they are identified in each other’s interviews. See Story MOI ¶¶ 2, 6; Christian MOI ¶¶ 2, 6.

<sup>7</sup> Every Republican Is Crucial (ERICPAC) is the leadership PAC of Representative Eric Cantor, who is referred to in the OCE Report at "Representative 1." See OCE Mem. of Interview of Representative 1, Ex. 8 at 12-9525 0086.

<sup>9</sup> See Story MOI ¶¶ 5, 12.

<sup>10</sup> *Id.* ¶¶ 12-13.

1 knowledge, no one from CPA requested the contributions from these individuals and entities.<sup>11</sup>  
2 Christian also states that she contacted Davis to get the complete contact information for these  
3 donors who made contributions by wire transfer and was supposed to let Davis know when CPA  
4 received the wire transfer and when CPA made the media buys.<sup>12</sup> Story says that Davis wanted  
5 confirmation that CPA spent \$100,000 on Kinzinger's race.<sup>13</sup> In an e-mail to Story on March 16,  
6 2012, Davis, using his "volunteersforshimkus.org" address, asked for confirmation that CPA  
7 spent "at least \$100,000 . . . on Rockford [Illinois] TV and any cable outlets you have added."<sup>14</sup>

8 As to the 18th District Committee contribution, the available information indicates that  
9 Schock's Campaign Director, Tania Hoerr, made the contribution to the 18th District Committee  
10 account at the direction of Schock's Chief of Staff, Steve Shearer.<sup>15</sup> Hoerr says that she:

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<sup>11</sup> See Christian MOI ¶ 26.

<sup>12</sup> *Id.* ¶ 25.

<sup>13</sup> See Story MOI ¶ 18.

<sup>14</sup> OCE Report Ex. 5 at 12-9525\_024 (E-mail from Rodney Davis to Jamie Story (Mar. 16, 2012 02:27 PM CDT)) ("Davis E-mail to Story"). The e-mail reads "Jamie, the \$25k echeck yesterday was rescinded, and the money was wired today from the 18th Congressional District PAC. That puts you at \$90,000 already wired. \$10,000 more may have been wired today from Canning, but I am not sure there. Have John get me a copy of the buy that shows at least \$100,000 being spent on Rockford TV and any cable outlets you have added. Thx." *Id.* CPA did not disclose the receipt of a contribution from "Canning," and Story says she did not have any knowledge of such an individual. See Story MOI ¶ 17. "John" appears to refer to CPA's "head Republican strategist" referenced in an e-mail from Story to Davis. OCE Report Ex. 14 at 12-9525\_0115 (E-mail from Jamie Story to Rodney Davis (Mar. 14, 2012 01:20 PM CDT)).

<sup>15</sup> See OCE Report Ex. 11 at 12-9525\_0100 (OCE Mem. of Interview of Tania Hoerr ¶¶ 3, 10 ("Hoerr MOI")). The OCE Report generally refers to Hoerr and Shearer by position rather than name, but they are identified in the Memoranda of Interviews of other witnesses. See, e.g., Christian MOI ¶ 19; Hoerr MOI ¶ 6. Hoerr is Schock's sister. See OCE Report at 15 n.62.

- 1 • had the necessary banking information to make the online contribution because she  
2 established the 18th District Committee account and routinely deposits money into its  
3 account from Schock's joint fundraising committee, Schock Victory Committee  
4 ("Victory Committee");<sup>16</sup>  
5
- 6 • did not recall needing to get approval from anyone other than Shearer in order to make  
7 the contribution, and did not recall speaking to 18th District Committee Chairman Mike  
8 Bigger prior to making the contribution;<sup>17</sup>  
9
- 10 • was not sure why Bigger did not make the contribution online himself;<sup>18</sup>  
11
- 12 • did not speak to Schock at that time about the contribution and did not recall if Shearer  
13 told her if anyone requested that the contribution be made;<sup>19</sup> and  
14
- 15 • learned from CPA that it would take a significant amount of time to process the online  
16 contribution she made, and that Shearer contacted Bigger for him to make the  
17 contribution from the 18th District Committee via a wire transfer.<sup>20</sup>  
18

19 The online contribution was duly rescinded and replaced by a wire transfer from the 18th  
20 District Committee.<sup>21</sup> Davis informed CPA of the replacement by e-mail.<sup>22</sup> Shearer says that  
21 Bigger contacted him to ask for the wire transfer information after Bigger and Schock had a  
22 conversation about eight or nine days prior to the Kinzinger primary election.<sup>23</sup>

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<sup>16</sup> See Hoerr MOI ¶ 12. The Victory Committee amended its Statement of Organization on March 9, 2011, to add the 18th District Committee as a participating committee along with Schock for Congress (Schock's principal campaign committee), GOP Generation Y Fund (Schock's leadership PAC), and the National Republican Congressional Committee.

<sup>17</sup> *Id.* ¶ 13.

<sup>18</sup> *Id.* ¶ 15.

<sup>19</sup> *Id.* ¶ 14.

<sup>20</sup> *Id.* ¶¶ 16-19. According to Story, Davis put her in contact with someone at the 18th District Committee who wired the contribution to CPA. See Story MOI ¶ 15.

<sup>21</sup> See Hoerr MOI ¶ 19; Story MOI ¶¶ 14-15.

<sup>22</sup> See Davis E-mail to Story, *supra*.

<sup>23</sup> OCE Report Ex. 12 at 12-9525\_0106 (OCE Mem. of Interview of Steve Shearer ¶ 18) ("Shearer MOI").

1 The available information indicates that Schock, with knowledge of the \$25,000  
2 commitment from the 18th District Committee, reached out to Representative Eric Cantor to see  
3 if Cantor could raise additional funds to support pro-Kinzinger ads by CPA. Schock was quoted  
4 in the press as stating to Cantor: "I said, 'Look, I'm going to do \$25,000 [specifically] for the  
5 Kinzinger campaign for the television campaign' and said, 'Can you match that?' And he said,  
6 'Absolutely.'"<sup>24</sup>

7 ERICPAC contributed \$25,000 to CPA on March 16, 2012.<sup>25</sup> Cantor's campaign  
8 spokesman reportedly stated that Cantor made the donation at the request of Schock; his  
9 description of the exchange was quoted in a news article as follows: "On Thursday, March 15,  
10 2012, Leader Cantor was asked by Congressman Schock to contribute to an organization that  
11 was supporting Adam Kinzinger in the Illinois election of March 20. ERICPAC subsequently  
12 made a contribution with the understanding that those funds would be used only in the effort to  
13 support Congressman Kinzinger."<sup>26</sup>

14 As to David Herro's \$35,000 contribution to CPA, Herro and Schock each say that  
15 Schock contacted Herro and told him that Kinzinger's election was close and asked Herro if he  
16 could help but did not suggest any amount.<sup>27</sup> Herro told Schock that he would help and that he

<sup>24</sup> See Stanton, *Cantor Gave \$25K*, *supra* (alteration in original). The bracketed term "[specifically]" appears in Schock's quote in the article. The article incorrectly reported that Schock's leadership PAC, GOP Generation Y Fund, contributed \$25,000 to CPA.

<sup>25</sup> ERICPAC 2012 April Monthly Report at 74 (Apr. 20, 2012).

<sup>26</sup> Stanton, *Cantor Gave \$25K*, *supra*.

<sup>27</sup> See OCE Report, Ex. 9 at 12-9525\_0092 (OCE Mem. of Interview of Schock ¶¶ 28-30) ("Schock MOI"); OCE Report Ex. 18 at 12-9525\_0125 (OCE Mem. of Interview of David Herro ¶¶ 9, 11) ("Herro MOI"). The OCE Report refers to Herro as "Donor 1."

1 would attempt to have others help.<sup>28</sup> Herro contributed \$35,000 to CPA on March 14, 2012,  
2 after receiving information regarding CPA from Shearer, Schock's Chief of Staff,<sup>29</sup> and from  
3 CPA, including that CPA wanted to raise \$100,000 in three days.<sup>30</sup> Herro says he solicited three  
4 individuals to contribute to CPA, one of whom, Anne Dias Griffin, contributed \$30,000 to CPA  
5 on March 16, 2012.<sup>31</sup>

6 **B. Legal Analysis**

7 **1. Applicable Law**

8 Under the Act and Commission regulations, federal candidates and officeholders; agents  
9 of federal candidates and officeholders; and entities directly or indirectly established, financed,  
10 maintained, controlled by, or acting on behalf of federal candidates or officeholders cannot  
11 "solicit" or "direct" funds in connection with an election for federal office, unless the funds are  
12 subject to the limitations, prohibitions, and reporting requirements of the Act. *See* 52 U.S.C.  
13 § 30125(e)(1)(A); 11 C.F.R. §§ 300.60, 300.61.

14 The Act limits contributions to non-authorized, non-party committees to \$5,000 in any  
15 calendar year. 52 U.S.C. § 30116(a)(1)(C). The Act also prohibits any candidate or political  
16 committee from knowingly accepting any contribution in violation of § 30116. *Id.* § 30116(f).

<sup>28</sup> *See* Herro MOI ¶ 10; Schock MOI ¶¶ 30-31.

<sup>29</sup> Shearer says that he provided CPA's wire transfer information to Herro at Schock's request. *See* Shearer MOI ¶¶ 23, 25-26.

<sup>30</sup> *See* Herro MOI ¶¶ 12-16. The David Herro Trust (the "Trust") made the \$35,000 contribution to CPA. *See* CPA 2012 Amended April Monthly Report at 8. Herro explained that the Trust is his bank account and he is the sole member of the Trust. *See* Herro MOI ¶ 18.

<sup>31</sup> *See id.* ¶ 17; OCE Report Ex. 20, 12-9525\_0131 (OCE Mem. of Interview of Anne Dias Griffin ¶¶ 7-8); CPA 2012 Amended April Monthly Report at 10. The OCE Report refers to Griffin as "Donor 2."



1 Following the decisions in *Citizens United v. FEC*<sup>32</sup> and *SpeechNow.org v. FEC*,<sup>33</sup> the  
2 Commission concluded in Advisory Op. 2010-11 (Commonsense Ten) that individuals, political  
3 committees, corporations, and labor organizations may make unlimited contributions to  
4 independent expenditure-only political committees, and that such committees may solicit  
5 unlimited contributions from such persons. Thus, committees such as CPA that have registered  
6 with the Commission may accept unlimited contributions from individuals, political committees,  
7 corporations, and labor organizations.<sup>34</sup>

8 2. There Is No Reason to Believe Respondent Accepted Excessive  
9 Contributions

10 Political committees like CPA that make only independent expenditures, and do not make  
11 any contributions,<sup>35</sup> may accept unlimited contributions from individuals and from other political  
12 committees like ERICPAC and the 18th District Committee.<sup>36</sup> Accordingly, CPA, in accepting  
13 contributions in amounts of \$25,000 and greater in this matter, has not received an excessive  
14 contribution. The Commission thus finds no reason to believe that CPA violated 52 U.S.C.  
15 § 30116(f).

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<sup>32</sup> 558 U.S. 310 (2010).

<sup>33</sup> 599 F.3d 686 (D.C. Cir. 2010).

<sup>34</sup> See Letter from Jonathan Martin, CPA Treasurer, to FEC (Sept. 27, 2011) (notifying the Commission that CPA intends to make independent expenditures and will not use its funds to make contributions), available at <http://docquery.fec.gov/pdf/262/11030664262/11030664262.pdf>.

<sup>35</sup> CPA has not established a separate account for contributions subject to the limitations and prohibitions of the Act. See Stipulated Order and Consent Judgment in *Carey v. FEC*, Civ. No. 11-259-RMC (D.D.C Aug. 19, 2011); see also FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011), <http://www.fec.gov/press/Press2011/20111006postcarey.shtml>.

<sup>36</sup> See AO 2010-11 (Commonsense Ten); *Citizens United v. FEC*; *SpeechNow.org v. FEC*.